530, a mortgage of all the mortgagor's real and personal property was sustained, and on principle there can be no sound distinction as regards invalidity because of wideness drawn between mortgages of present and future interests. The limitation in short would seem not only arbitrary, but, for all that appears, entirely unnecessary.

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A LEGAL ASPECT OF PRAIRIE-FIRES. — In *Owen* v. *Cook*, 81 N. W. Rep. 285 (N. Dak.), the plaintiff sought to recover damages for injuries to his property alleged to have been caused by fire set by the defendants. The defendants, in order to protect their property from destruction by an approaching prairie fire, had set back-fires, which, together with the main fire, destroyed the plaintiff's buildings. It was held that the defendants were not liable, since in the opinion of the court the case came within the principle of the "squib" case. *Scott* v. *Shepherd*, 2 W. Bl. 892. The real question there was whether trespass or case would lie against a defendant who had thrown a lighted squib on the property of another. This was tossed along by two intermediate actors, and finally struck the plaintiff Scott. The decision of the court holding that trespass would lie was based on the theory that the acts of the intervening agents did not break the causal connection between the defendants' act and the plaintiff's injury. The danger was conceived to be so imminent as to overpower the reasoning faculties, and produce instinctive or automatic action.

Yet how the principle of that case applies to the present facts is not clear. The exigency did not demand instinctive action nor did the defendants act automatically. It may well be that the court in excusing the defendants were influenced by the *dictum* in the "squib" case that acts done for self-protection under compulsive necessity would not be regarded as acts of a free agent, and hence would not break the causal connection. If this be the application of the principle of *Scott* v. *Shepherd*, — and no other seems plausible, — it is equally as unjustifiable as the former suggestion. One may not in all cases protect himself at the expense of his neighbor even though the danger be imminent, and to say that compulsive necessity will excuse is to introduce a standard too unstable and too indefinite for a rule of law.

What, then, is the criterion of legal liability in those cases where one in warding off danger from himself forces it on another? The authorities are not explicit. It is said that one cannot justify a deliberate injury of his neighbor's property by claiming that it was done in defence of his own. Pollock, Torts, 4th ed. 162. The same idea is suggested in some cases. In the dissenting opinion of Blackstone, J., in *Scott* v. *Shepherd*, *supra*, the intermediate agents were considered as acting on their own judgment, hence should have been responsible. So in *Ricker* v. *Freeman*, 50 N. H. 420, instructions were given that if time for reflection or deliberation were given the actor, legal liability would attach. And in a later case, *Laidlaw* v. *Sage*, 80 Hun, 550, the essence of liability was said to depend, not on whether an act was voluntary, but on whether it was the result of an intent based on reasoning. So far as these authorities go, then, they seem to recognize a common characteristic in these sudden acts for which one may be liable. That characteristic is the deliberate nature of the act. A deliberate act is one done in the exercise of the reasoning powers. It

is manifest, however, that the length of the period of deliberation can make no difference in the statement of the principle of liability. It therefore seems correct to say that when the act done under stress of circumstances is the result of an exercise of the reasoning faculties, however rapid, the actor is subjected to the ordinary rules of legal liability. 7 HARVARD LAW REVIEW, 302. So the principle of the "squib" case does not apply, for here is not an instance of instinctive action. Since the defendant's act was deliberate, he should not have been excused on the ground that he acted for self-protection under necessity.

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LIABILITY FOR BLASTING. — The precise extent of the liability for damage caused by blasting is doubtful on the authorities. In accord with the view sustained by the weight of authority, that liability attaches irrespective of negligence, is a late decision in New York. In the course of the blasting operations of the defendant upon his own land, a portion of a tree was thrown a distance of some four hundred feet upon the plaintiff's intestate, who was travelling upon the highway, causing her death. A ruling of the trial judge that it was not essential for the plaintiff to establish negligence in order to make out a cause of action was sustained by the Court of Appeals. *Sullivan* v. *Dunham*, New York Law Journal, Jan. 24, 1900.

On principle it is hard to find any real difference between liability for injuries caused by blasting and for those caused by the accidental explosion of a powder magazine. The distinction that the actual explosion was intentional in the one case and not so in the other is immaterial, as in neither instance was there any intent to cause the resulting damage. Upon the keeper of dangerous explosives absolute liability is imposed only when by reason of the location and surrounding circumstances the magazine is a nuisance. *Heeg* v. *Licht*, 80 N. Y. 579. If the magazine is not so situated as to cause reasonable fear of injury to those in the neighborhood, the defendant is liable only for injuries resulting from negligence. 13 HARVARD LAW REVIEW, 310. Similarly it would seem that where the locality and circumstances are such that it was not probable that damage would result to the person or property of others from the use of blasting powder, a defendant should be held liable for a consequent injury only if he failed to use due care. If, however, there was an antecedent probability of such damage, the mere act of blasting was such an unreasonable user as to amount to a nuisance. Liability would then attach to any injury proximately caused.

The leading American case on this subject, on the authority of which the decision in the principal case is vested, is *Hay* v. *Cohoes*, 2 N. Y. 159. Although in that case the facts seem to point to a user so unreasonable as to amount to a nuisance, the court was apparently influenced in their decision by the old theory of absolute liability for trespass; "he that is damaged ought to be recompensed;" a theory which is not generally supported in this country, and which later has been substantially denied in New York. *Losee* v. *Buchanan*, 51 N. Y. 476. The weight of authority follows *Hay* v. *Cohoes* in imposing absolute liability irrespective of the degree of danger, yet in the great majority of cases the facts show that there was an actual nuisance; and this might be said even of the princi-